

FACT SHEET



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Financial Responsibility and Excess Liability Trust Fund Office of Land Quality

(317) 234-4112 • (800) 451-6027 www.idem.IN.gov 100 N. Senate Ave., Indianapolis, IN 46204

Introduction:

Every underground storage tank (UST) owner or operator of regulated petroleum USTs in Indiana must comply with the state and federal requirements for financial responsibility (FR) as required by the Indiana Code (IC 13-23-4), the Indiana Administrative Code (329 IAC 9-8), and the Code of Federal Regulations (40 CFR, Part 280, Subpart H).

- Owners and operators of one to 100 petroleum USTs must have an annual aggregate of \$1 million per occurrence for corrective action and third-party claims; and
- Owners and operators of 101 or more petroleum USTs must have an annual aggregate of \$2 million.

The Indiana Department of Environmental Management (IDEM) administers the Excess Liability Trust Fund (ELTF). It is an FR mechanism for owners and operators to cover up to \$2 million per occurrence with a deductible paid by the applicant of \$20,000 to \$35,000, depending on the type of UST system that had a release. The source of funding is from a \$0.01 per gallon inspection fee levied on gasoline, diesel and kerosene by the Indiana Department of Revenue.

If an owner or operator is using ELTF as their FR mechanism, they must be able to show they can pay a deductible based on the number of USTs they own or operate and the physical characteristics of those tanks as outlined in IC 13-23-8-3.

- Owners or operators of 12 or fewer USTs must be able to prove they can pay a single deductible at a rate set by IC 13-23-8-3.
- Owners or operators of 13 or more USTs must be able to prove they can pay two deductibles.

Environmental Impacts:

- Indiana has over 4,300 operating UST sites that have over 13,000 USTs. If not managed properly, these sites can have negative impacts on human health and the environment from releases such as underground leaks and above ground spills.
- Refined petroleum products such as gasoline and diesel are a mixture of numerous compounds that have a detrimental effect on human health or the environment. These compounds are often toxic or carcinogenic.
- Contamination from leaking UST sites can migrate to streams or lakes, contaminate drinking water, or cause dangerous vapors in buildings and underground sewers.
- By ensuring that UST owners and operators have the financial mechanisms in place to quickly clean-up leaking USTs, the problems can be addressed quickly to protect human health and the environment.

IDEM's Role:

- IDEM is responsible for protecting human health and the environment while providing for safe industrial, agricultural, commercial, and governmental operations vital to a prosperous economy. Three IDEM programs are in place to oversee compliance with UST regulations.
 - The UST Program is responsible for ensuring that UST owners and operators comply with the requirements for FR and are operating and maintaining their systems properly.
 - The Leaking UST Program is responsible for ensuring adequate cleanup of contamination from leaks and spills.
 - The ELTF Program is responsible for determining eligibility for ELTF access and reviewing claims for payment.

UST Owner or Operator's Role:

If the owner and operator of a petroleum UST are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

A UST owner or operator that intends to use the ELTF as their FR mechanism must do the following:

- Obtain one of the financial mechanisms detailed in 329 IAC 9-8-11(c) or (d) in the amount needed to cover the applicable deductible.
- Indicate the choice of an FR mechanism in Block G of the UST Notification Form (State Form 45223).
- Create the Certification of Financial Responsibility (COFR) as required by 329 IAC 9-8-21(c).
- Request a Certificate of Financial Assurance (COFA) using the Request for COFA (State Form 52884).
- Ensure the FR mechanism documentation, COFR and COFA are available when a UST Inspector arrives to inspect the site.
- If a release from a UST is suspected or confirmed, report it immediately and submit the FR proof to IDEM within 30 days of confirmation.
- It is important for owners and operators to remember that being in compliance with the FR requirements of 329 IAC 9 is the first step in being able to submit a claim for reimbursement from the ELTF. Owners and operators must be in compliance with the UST rule technical standards in 329 IAC 9 at the time a claim is submitted in order to be reimbursed in accordance with ELTF rule in 328 IAC 1.
- **COFA Eligibility:** In order for a COFA to be issued to an owner or operator for a particular UST site, the UST fees must be paid in full and the site must not have any outstanding compliance issues. If the owner or operator is under an enforcement action, it must be resolved before a COFA will be issued.
- In order for a COFA to remain valid, the FR mechanism must not have expired and must agree with the COFR and the COFA. Any substantive changes to the FR mechanism will require a new COFR and COFA.

ELTF FR Mechanisms:

- The following are the eight FR mechanisms that owners and operators can use to meet the deductible required for ELTF. Local governments have four additional options.
 - Loan Commitment Letter (see 329 IAC 9-8-11(c)(1))
 - Certificate of Deposit (see 329 IAC 9-8-11(c)(2)) and Standby Trust Fund (see 329 IAC 9-8-13)
 - Tangible Net Worth Letter (see 329 IAC 9-8-11(c)(3))
 - Liability Insurance (see 329 IAC 9-8-11(c)(4))
 - Surety Bond (see 329 IAC 9-8-11(c)(5))
 - Letter of Credit (see 329 IAC 9-8-11(c)(6))
 - Trust Fund (see 329 IAC 9-8-11(c)(7)) and Standby Trust Fund (see 329 IAC 9-8-13)
 - Guarantee (see 329 IAC 9-8-11(c)(8))
 - Local Government Bond Rating Test (see 329 IAC 9-8-11(d)(1))
 - Local Government Financial Test (see 329 IAC 9-8-11(d)(2))
 - Local Government Guarantee (see 329 IAC 9-8-11(d)(3))
 - Local Government Dedicated Fund Account (see 329 IAC 9-8-11(d)(4))

Additional Information:

- For questions regarding FR, call the UST Program at (317) 234-4112 or (800) 451-6027, ext. 4-4112.
- For questions regarding ELTF eligibility and claims, call the ELTF Program at (317) 234-0990 or (800) 451-6027, ext. 4-0990.
- Applicable laws are found at:
 - UST Rule- www.IN.gov/legislative/iac/T03290/A00090.PDF
 - ELTF Rule - www.IN.gov/legislative/iac/T03280/A00010.PDF
- Additional information is available regarding FR at www.idem.IN.gov/4999.htm and ELTF at www.idem.IN.gov/5063.htm.